

Earl D. Gregory, Ph.D., CIH

January 30, 2015

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

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LARRY HOFFMAN and JUDITH)	
HOFFMAN, husband and wife,)	
)	
Plaintiffs,)	No. 14-2-07178-2
)	
vs.)	
)	
ALASKAN COPPER COMPANIES,)	
INC.; et al.,)	
)	
Defendants.)	
_____)	

TELEPHONIC DEPOSITION OF

EXPERT EARL D. GREGORY, PH.D., CIH

Friday, January 30, 2015

11:03 a.m.

REPORTED BY:

GISELLE GIRARD

CSR #12901

January 30, 2015

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EXHIBITS

EXPERT EARL D. GREGORY, PH.D., CIH

Larry Hoffman vs. Alaskan Copper Companies, Inc.

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PLAINTIFFS'	DESCRIPTION	PAGE
1	Hoffman Notes (21 pgs.)	9
2	Summary for Hoffman, American Standard and Kewanee Boilers Notes (2 pgs.)	10
3	Motion for Summary Judgment Notes (2 pgs.)	11
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1 Friday, January 30, 2015

2
3 EARL D. GREGORY, PH.D., CIH,

4 having been first duly affirmed, was examined and

5 testified as follows:

6
7 EXAMINATION

8
9 BY MR. PEARCE:

10 Q. Good afternoon, sir -- I believe it's afternoon
11 where you are. Can you hear me okay?

12 A. If you can speak a little louder, that would be
13 better.

14 Q. And, sir, can you state your full name for the
15 record.

16 A. Earl Daniel Gregory.

17 Q. And I understand that you have a Ph.D. in -- you
18 have a Ph.D.; correct?

19 A. Ph.D. in industrial hygiene, that's correct.

20 Q. So where are you presently located?

21 A. My address is 5718 Yamassee Drive -- that's my
22 home address in Hamilton, Ohio. And I'm giving this
23 deposition in Westchester, Ohio at a Marriott.

24 Q. And I understand that Mr. Tuvim is with you. Is
25 anybody else with you?

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1 A. No, that's it.

2 Q. And by whom have you been retained in this case?

3 A. By Mark Tuvim.

4 Q. Do you know for which defendant?

5 A. Yes. For Trane as well as Oakfabco,
6 Incorporated.

7 Q. And when were you retained?

8 A. Approximately two weeks ago, two to three weeks
9 ago.

10 Q. All right. And how were you retained? Was it a
11 phone call, was it an e-mail? How did that happen?

12 A. It was a phone call from Mark Tuvim.

13 Q. And have you worked for Mr. Tuvim before?

14 A. No, this is the first time.

15 Q. All right. Have you worked for either Oakfabco
16 or Trane before?

17 A. Yes, I have worked and represented Trane in other
18 American Standard cases.

19 Q. Is it correct to say that you have never done any
20 work with regards to Oakfabco before?

21 A. Yes, I've never testified on their behalf.
22 Although I have written some statements of opinion that
23 have involved both American Standard and Kewanee
24 boilers.

25 Q. And do you have a file here today?

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1 A. Yes. I brought documents with me today that I
2 plan -- that were asked of me.

3 Q. And what's in your file?

4 A. Well, I have my notes from Mr. Hoffman's
5 Volumes I, II and III of his depositions; I have a
6 summary for Hoffman related to American Standard and
7 Kewanee boilers only; and I have notes based on my
8 review of the motion for summary judgment; the
9 declaration of Kevin Craig, that's how that's entitled;
10 there's also notes from the affidavit of Richard
11 Weisbecker; and notes from Richard Olson's affidavit;
12 and I have my C.V. and copies of the correspondence that
13 I've had with Mark Tuvim.

14 Q. All right.

15 MR. PEARCE: Let's mark as Exhibit 1 your notes.

16 THE WITNESS: Okay.

17 (Plaintiffs' Exhibit 1 was marked for
18 identification and attached hereto.)

19 BY MR. PEARCE:

20 Q. And we'll mark as Exhibit 2 something that you
21 said was your summary about American Standard and
22 Kewanee boilers?

23 A. Pardon? Exhibit 1 is Notes by Earl Gregory?

24 Q. Yeah. And Exhibit 2 is -- you have something
25 called a summary of your opinions as to American

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1 Standard and Kewanee boilers?

2 A. Summary for Hoffman related to American Standard
3 and Kewanee boilers, notes only, yes.

4 MR. PEARCE: Mark, have I seen that document?

5 MR. TUVIM: Yes. I sent them out earlier this
6 morning when I got them.

7 MR. PEARCE: So let me pull that document up.
8 Hold on one second.

9 All right. We'll mark the additional notes as
10 Exhibit 2.

11 (Plaintiffs' Exhibit 2 was marked for
12 identification and attached hereto.)

13 BY MR. PEARCE:

14 Q. So Exhibit 2 is the summary of the American
15 Standard and Kewanee boilers. And on that note, sir, at
16 the very end of that -- how many pages is that?

17 A. Summary for Hoffman Related to American
18 Standard -- two pages.

19 Q. And then how about for Kewanee boilers?

20 A. That's together. That would be Exhibit 2, two
21 pages.

22 Q. And what are your notes on the MSJ? Do you --

23 A. Yeah --

24 Q. -- I don't know what they are.

25 A. Yeah, it's just like a quarter of a paragraph.

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1 It starts off at pages labeled Motion for Summary
2 Judgment.

3 Q. Can you just read it for me, then.

4 A. Motion for Summary Judgment, "Stated none of the
5 insulation on Trane equipment would have contained
6 asbestos. Olson and Uhl depositions indicated no
7 asbestos insulation from 1950 on. No rope between
8 sections. Said Hoffman didn't know where he installed
9 Trane equipment, and he didn't say he handled gaskets or
10 packing with them."

11 MR. PEARCE: So we'll mark that Exhibit 3.

12 (Plaintiffs' Exhibit 3 was marked for
13 identification and attached hereto.)

14 BY MR. PEARCE:

15 Q. And what are your notes from Weisbecker, and then
16 there's another one as well?

17 A. Yeah, that's Exhibit 3. That would be Page 2 of
18 that.

19 Q. So you don't have any additional notes. You just
20 reviewed those three declarations and marked that one
21 little paragraph of notes; is that correct?

22 A. Yeah, the declaration of Dennis Dorman; and
23 affidavit of Richard Weisbecker; and Richard Olson
24 affidavit.

25 Q. And then we'll mark as Exhibit 4 your

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1 correspondence file, but can you tell briefly tell me
2 what your correspondence file contains.

3 A. Yes. Basically it is correspondence from Mark
4 Tuvim indicating that there were documents attached for
5 me to review, Volume I, Volume II; and then also Hoffman
6 Style Discovery Responses were attached.

7 Basically it's just an e-mail from Mark to me,
8 the subject indicating Volume I or Volume II of Hoffman,
9 Volume III of Hoffman; Hoffman Style Discovery
10 Responses; Hoffman versus Alaskan Copper Companies,
11 which is material from Oakfabco's counsel for me review;

12 And let's see. And then also to review
13 Plaintiffs' Response to Saberhagen; Plaintiffs' response
14 to Pacific Plumbing; and Response to Familian Rogs; and
15 then Exhibits 1 through 6 from the Declaration of Craig;
16 and Hoffman Motion For Summary Judgment contained in
17 another e-mail correspondence;

18 And then also Plaintiffs' expert Mr. William
19 Ewing's report on this matter was a subject of another
20 e-mail with that being attached; and the only other
21 thing is he asked for my C.V., and I have a copy of my
22 submission of my C.V. to Mark Tuvim. And that's it.

23 MR. PEARCE: Why don't we mark the cover letter
24 without the exhibits attached as next in order --

25 MR. TUVIM: Tim, we're having a lot of trouble

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1 hearing you.

2 MR. PEARCE: Can you mark just the cover letters
3 as next in order.

4 MR. TUVIM: Well, the correspondence -- which
5 cover letter? Just the cover e-mails?

6 MR. PEARCE: I don't need the actual -- what was
7 attached but just the --

8 MR. TUVIM: Right. So is that what you want in
9 Exhibit 4? That's the only correspondence we have.

10 MR. PEARCE: Perfect. That's what I want as 4,
11 then.

12 MR. TUVIM: So the cover e-mails will be
13 Exhibit 4.

14 MR. PEARCE: Right.

15 (Plaintiffs' Exhibit 4 was marked for
16 identification and attached hereto.)

17 MR. PEARCE: And his C.V. will be 5.

18 MR. TUVIM: Okay.

19 (Plaintiffs' Exhibit 5 was marked for
20 identification and attached hereto.)

21 BY MR. PEARCE:

22 Q. Now, Dr. Gregory, is it still true that you have
23 never published anything or given any presentations
24 related to asbestos?

25 A. No. I've given presentations that covered

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1 asbestos as well as other potential occupational
2 exposures to various chemicals. I haven't published any
3 specific documents that related only to asbestos.

4 Q. And what presentations are you referring to that
5 discussed asbestos?

6 A. Well, I've given training courses on industrial
7 hygiene techniques and potential health hazards. I've
8 given presentations to various audiences, from college
9 students to industrial hygienists that were studying to
10 take the certification exam.

11 I've also given presentations to employers and
12 union representatives where I've covered potential
13 occupational health hazards in various industrial
14 operations, and some of those did involve me speaking
15 with asbestos among other potential air contaminants.

16 Q. And, sir, I see by your C.V. that you are a
17 member of the ACGIH; is that correct?

18 A. I used to be a member. I'm no longer a member
19 because once you no longer work for the government, you
20 can't be a full member of the ACGIH; only government
21 workers can be full members.

22 Q. And you agree with me that when you were a member
23 of the ACGIH, you understood that asbestos was an A1
24 carcinogen?

25 A. When I was a member from 1974 to '81, asbestos

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1 was listed in the ACGIH TLV booklet, and it was
2 considered at that time a potential carcinogen.

3 Q. Was it considered an A1 carcinogen? Do you know
4 what that means?

5 A. According to the ACGIH TLV booklet?

6 Q. Correct.

7 A. In later years it was. I forget what year that
8 change was made but -- of course I've been in the field
9 of industrial hygiene since 1974, so I can't remember
10 when the classification was changed.

11 Q. And can you tell me what it means to be an A1
12 carcinogen?

13 A. Well, those are carcinogens that have been, based
14 on the latest scientific evidence, proven to occur as a
15 result of overexposures to various airborne chemical
16 contaminants in the workplace.

17 Q. And you would agree with me that with regards to
18 asbestos, all fiber types are considered an A1
19 carcinogen?

20 A. I'm sorry. You cut out there towards the end.
21 Could you repeat that.

22 Q. Sure. You would agree with me that with regards
23 to fiber types as to asbestos, all fiber types are
24 considered an A1 carcinogen?

25 A. I don't know if it's classified that way right

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1 now. I know that evidence has indicated that all forms
2 of asbestos have the potential of causing cancer. It's
3 just a matter of how much exposure dose it takes to
4 increase the incidence of cancer. And it varies with
5 the different fiber types.

6 Q. All right. Have you generated a report in this
7 case?

8 A. No, I did not.

9 Q. All right. Did you attempt to do a total dose
10 reconstruction for Mr. Hoffman in this case?

11 A. No, I did not.

12 Q. Have you ever testified for a plaintiff in
13 asbestos related litigation, third-party asbestos
14 related litigation?

15 A. I have never testified. I have written
16 statements -- a statement of opinion. And I've also
17 talked to various law firms by telephone where they
18 discussed the basic issues of a case and asked for at
19 least my preliminary opinions on the case. But I've
20 never given a deposition involving asbestos for a
21 plaintiff.

22 Q. Have you ever testified in trial before?

23 A. Yes.

24 Q. In an asbestos related action? I should have
25 added that in.

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1 A. Yes, I have.

2 Q. On how many prior occasions?

3 A. I believe I have testified three times on
4 asbestos in trials.

5 Q. And for whom did you testify for at trial?

6 A. Two times involved Owens-Illinois. And the other
7 time involved my ex-employer, which was Anco Steel
8 Company, where I served as a fact witness. And I also
9 represented Garlock in that particular case as
10 well -- well, I mean I didn't represent. I was an
11 expert witness for Garlock in that particular case.

12 And then there was another Owens-Illinois case.
13 So three Owens-Illinois cases; and one involving my old
14 company, Anco, and Garlock.

15 Q. As an industrial hygienist, you have reviewed
16 Larry Hoffman's deposition; is that correct?

17 A. That's correct.

18 Q. And when you did your review, you were looking
19 for potential exposures Mr. Hoffman had to asbestos; am
20 I correct?

21 A. That's correct.

22 Q. All right. And you understand that Mr. Hoffman
23 has mesothelioma?

24 A. That's my understanding, yes.

25 Q. But you haven't reviewed any of his medical

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1 records; is that correct?

2 A. No, I have not.

3 Q. As an industrial hygienist, did you form any
4 opinions about any potential exposures that Mr. Hoffman
5 might have had, either occupationally or
6 para-occupationally, to asbestos which would have
7 contributed to his development of mesothelioma?

8 A. Well, that's more or less, in my opinion, a
9 medical question. I don't like to get into the
10 causation of mesothelioma. My purpose as an industrial
11 hygienist is to determine what potential asbestos
12 exposures a person may have had during their
13 occupational and nonoccupational careers, or exposure
14 periods.

15 Q. I think that's the question I just asked you. So
16 why don't you answer that question as you rephrased it.

17 What potential exposures do you think Mr. Hoffman
18 had to asbestos during his occupational and
19 para-occupational career?

20 A. Well, there were numerous potential asbestos
21 exposures that I believe he may have had. But there's
22 more evidence that needs to be developed to prove all of
23 those.

24 But, for example, fireproofing, it appears based
25 on his deposition, that he worked with asbestos

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1 containing fireproofing material and had to scrape it
2 off of structural metal support beams in order to hang
3 his hangers on the beams to support the plumbing that he
4 was going to install in the building. And he said that
5 he scraped the -- what he described as asbestos
6 containing fireproofing hundreds of times. So that was
7 certainly a source of significant asbestos exposures.

8 He said he also cut Transite pipe at
9 numerous -- on numerous projects and cut it with a saw,
10 power saw, as well as a handsaw. That would certainly
11 create significant exposures to asbestos. He said he
12 cut Orangeburg piping, which also contained asbestos,
13 and that would have created a potential for asbestos
14 exposure.

15 He said he was around drywallers when they were
16 finishing what he believed to be asbestos containing
17 joint compound, and that would have resulted in
18 potential asbestos exposures. He said he was near
19 insulators in his earlier years that were insulating
20 piping, and certainly he would have had a potential of
21 asbestos exposure if it those insulators were using
22 asbestos containing pipe insulation.

23 And he said he had to clean up at the
24 Ketchikan -- or Ketchikan Pulp plant in his earlier
25 years. He had to clean up after insulators and other

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1 trades; and that he also did a cleanup throughout the
2 pulp mill. And if any asbestos containing materials
3 were involved in his cleanup, then that would have been
4 a potential as well for him to have received asbestos
5 exposures.

6 He said he used welding rods that had fluxes.
7 Many welding rods during that time period did contain
8 asbestos in their fluxing material, so that was another
9 potential source of asbestos. And he said he used an
10 asbestos welding blanket when he was doing welding, and
11 that was a significant part of his job, performing the
12 welding. So anytime you used asbestos containing
13 blankets, you have a potential for exposure to asbestos
14 from disturbing those particular blankets.

15 So those in my view were the most significant
16 potential asbestos exposures that he had during his
17 working career.

18 Q. I'm curious: What years did Orangeburg pipe
19 contain asbestos on the West Coast?

20 A. I don't recall him identifying the year on that.
21 So that's why I indicated that more information was
22 needed for some of the exposures that he felt he had.
23 And that's the only way we can determine whether or not
24 that particular product did contain asbestos.

25 Q. So is it fair to say that as you sit here today,

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1 you can't tell me one way or another whether or not the
2 Orangeburg pipe that Mr. Hoffman worked with contained
3 asbestos on a more likely than not basis?

4 A. No, because he doesn't give the year. And I
5 don't know if at a certain period of time the Orangeburg
6 pipe, which at one time did contain asbestos, whether or
7 not they eliminated asbestos at a certain year, and I
8 don't know what year that would have been. But I know
9 that at one time Orangeburg pipes did contain asbestos.

10 Q. But as you sit here today, you can't tell me more
11 likely than not he had exposure to asbestos from his
12 work with Orangeburg pipe; correct?

13 A. No, I cannot. There's just not a sufficient
14 amount of evidence to let me know one way or another.
15 Just the potential is all that I could indicate, the
16 potential for exposure, if that Orangeburg pipe did
17 contain asbestos and --

18 Q. All right. Sir, I'm not critical. I'm trying to
19 figure out -- I'm trying to do this in an expedient
20 fashion. I'm just trying to figure out what your basis
21 is for some of these opinions.

22 And you had indicated that he worked with a
23 welding rod. What brand or manufacturers of welding
24 rods did he identify? What was the model number and
25 asbestos content of those welding rods?

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1 A. Well, he didn't get that specific -- let me
2 repeat this again: There's not sufficient evidence in
3 some of these alleged exposures to determine whether or
4 not the product did contain asbestos.

5 He identified that he used Lincoln welding rods
6 with flux, and some Lincoln welding rods did contain
7 asbestos containing flux material. But he didn't
8 identify the particular number, identification number,
9 or any specific identification of the type of Lincoln
10 flux welding rod he used.

11 Q. And because of that, you can't tell me to a
12 reasonable degree of scientific certainty that he was
13 more likely than not exposed to asbestos from those
14 welding rods; correct?

15 A. The only thing I can say is that he had the
16 potential for exposure, if those in fact were the
17 Lincoln asbestos containing welding rods.

18 Q. What is your exposure range that you're aware of
19 for cutting Transite pipe?

20 A. For asbestos containing Transite pipe?

21 Q. Yes.

22 A. Did you ask me -- I'm sorry. You cut off a --

23 Q. What's your exposure range that you think he had
24 to cutting Transite pipe?

25 A. Well, if he was cutting asbestos containing

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1 Transite pipe, his exposure level was very, very high.
2 And I've been in plants where they have cut similar
3 products -- it wasn't Transite, but it was Flintkote
4 asbestos containing cement pipes, and the exposure
5 levels during cutting were far in excess of the OSHA
6 permissible exposure limits at that time.

7 And I don't remember exactly what they were, but
8 they were 20 fibers per CC or above. And I've even seen
9 some reports of exposure concentrations being above 50
10 fibers per CC.

11 Q. And for the record can you identify those reports
12 which you're relying upon?

13 A. I'm not relying on those, and I forget where
14 those reports were. I mean I did the sampling as an
15 OSHA inspector at the Flintkote asbestos containing
16 cement pipe factory, but I don't have any specific
17 references on asbestos containing cement pipe exposure
18 levels. But they are in the literature, and the
19 exposure levels were very, very high.

20 Q. And did you publish your findings about what you
21 saw at the Flintkote asbestos cement pipe factory?

22 A. No. As an OSHA compliance officer, you weren't
23 allowed to publish the results of surveys that you did
24 at different employer sites. Your role was to issue a
25 citation if the exposure levels exceeded the federal

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1 limits at that time.

2 Q. What do you think his exposure levels were from
3 working including up at the Ketchikan Pulp mill?

4 A. Again, as I indicated, there wasn't sufficient
5 information provided in his testimony for me to give an
6 approximation of his exposure levels.

7 In other words, he said he did cleanup around
8 insulators and other crafts, but he didn't indicate what
9 type of material he was cleaning up -- whether it was
10 asbestos containing cement, asbestos containing thermal
11 insulation or anything like that -- and he didn't
12 indicate how much he was cleaning up. And all of those
13 factors would determine what his possible exposure
14 levels may have been.

15 But without those factors, I can't give a range
16 of what his exposure level to asbestos would have been;
17 other than to say that if he was cleaning up asbestos
18 containing friable materials, then he would have had
19 some exposure to airborne asbestos fibers.

20 Q. And then do you think he had a para-occupational
21 exposure from his father's work as a pipefitter at the
22 Ketchikan Pulp mill?

23 A. Again, there wasn't sufficient information
24 provided in his testimony for me to make any kind of
25 judgment or offer any kind of opinions. He said his

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1 father was a welder, and his father came home from work
2 in his work clothes, and his mother did the laundry.

3 But there's no information such as the type of
4 work his father did, whether he worked with asbestos
5 containing materials, whether he took a shower before he
6 came home, whether he blew off his clothing before he
7 came home; none of that information that you really need
8 to determine a potential for secondary exposures was
9 provided in his testimony.

10 Q. Let me ask you this: Are you familiar with pulp
11 mills at all?

12 A. Pardon?

13 Q. Are you familiar with paper and pulp mills?

14 A. I've been in paper and pulp mills, yes.

15 Q. Have you ever testified in a paper and pulp mill
16 case before?

17 A. I don't think so. I've given some statements of
18 opinions, but I've never testified on that particular
19 subject.

20 Q. I want you to assume that Larry's father, Doyle,
21 worked as a pipefitter welder, and that he disturbed
22 asbestos containing pipe insulation and that he worked
23 around individuals disturbing thermal insulation on
24 blankets, as well as cutting and removing thermal
25 insulation and mixing asbestos containing cement.

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1 In addition, he also did not change his clothes before
2 he came home and did not take a shower.

3 With that set of hypotheticals, would that change
4 any of your opinions?

5 MS. JOHNSON: Objection; calls for speculation;
6 assumes facts not in evidence. Malika Johnson for
7 Ketchikan.

8 THE WITNESS: You're asking me to make
9 assumptions that aren't based on facts or scientific
10 evidence. And I have a real problem with giving an
11 opinion that is not based on facts and evidence in the
12 case.

13 BY MR. PEARCE:

14 Q. Are you trying to tell me you can't answer a
15 hypothetical?

16 A. No. What I'm saying is you're asking me to give
17 an opinion that's not based on facts that were presented
18 in the case and making me assume a lot of things that
19 have not been established as evidence in the case.

20 So, therefore, you're asking me to make a very
21 unscientific evaluation and give a very unscientific
22 opinion, and I would prefer not to do that.

23 Q. All right. Have you reviewed the declaration of
24 Mr. Guyon in this case, G-u-y-o-n?

25 A. No, I have not.

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1 Q. And, sir, do you remember being involved in a
2 case by the name of Terry which was in the circuit court
3 for Knox County Tennessee?

4 A. I'm sorry. Can you repeat.

5 Q. Do you remember being involved in a case by the
6 name of Gary W. Perry and Patricia M. Perry v. Armstrong
7 International? In that case you were deposed on
8 September 11, 2008, and the case was venued in the
9 circuit court for Knox County, Tennessee.

10 A. Was that Gary Perry and was that a Goulds Pumps
11 case?

12 Q. Well, yes, it was Gary Perry, and, yes, Goulds
13 Pumps was in the case --

14 A. Yes, I do remember I gave a deposition in that.

15 Q. So do you remember saying in that deposition
16 saying, "As a pipefitter, the pipefitters are usually
17 not too far in front of the insulators. And in many
18 cases, in many circumstances, the pipefitters are
19 exposed to the same types of exposure, the same levels
20 of exposure. Depending on their distance from those
21 insulators, they're exposed to similar levels of
22 airborne asbestos as the insulators." Do you recall
23 saying that?

24 A. That may have been true in that case. I don't
25 remember the specifics of that. I'd have to go over all

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1 the depositions in that case. But I don't deny that I
2 said that, but I don't remember the specifics of that
3 case. So I mean -- it's a matter of record that I did
4 say that.

5 And as a pipefitter, if you do work very close to
6 insulators, you can be exposed to similar
7 concentrations. But in general, the concentrations are
8 less than the insulator would be exposed to, and it's
9 determined by distance and air currents. The farther
10 away you are, as a pipefitter from insulators, the lower
11 your exposure levels would be.

12 Q. Are you familiar with shutdowns that happen in
13 pulp and paper mills?

14 A. Yes, I am.

15 Q. What happens during a shutdown?

16 A. Well, that's typically where those mills do their
17 major maintenance and repair operations, and they shut
18 down much of the mill to work on the equipment.

19 Q. And I'm curious: What materials would have been
20 used at the paper and pulp mill in Alaska that were not
21 asbestos containing? What insulation materials were
22 used that could handle 800 degrees of heat --

23 MS. JOHNSON: Objection; calls for speculation.

24 MR. PEARCE: -- during the 1960s?

25 THE WITNESS: Yeah, are you talking about

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1 insulating materials? Because that sounded kind of
2 broad to me.

3 MR. PEARCE: Yeah, insulating -- pipe covering
4 and --

5 THE WITNESS: Because you can -- steel will take
6 that, and almost any metal will take that kind of
7 temperature.

8 But for insulating materials -- again, we're
9 talking about the late '60s. Most of the thermal
10 insulating materials used in -- not only that mill but
11 many other mills where there were hot processes, most of
12 the thermal insulation used did contain asbestos.

13 BY MR. PEARCE:

14 Q. Okay. And have you reviewed anything in this
15 case with regards to Kewanee specifically?

16 A. I reviewed their response to the defendants'
17 questions -- I'm sorry. To the plaintiffs'
18 interrogatories.

19 Q. And do you know -- is Kewanee --

20 A. And their summary judgment motion.

21 Q. Okay. And have you reviewed, for example, their
22 person most qualified's deposition testimony?

23 A. I haven't read any depositions of their corporate
24 reps or anything like that, no, I haven't -- other than
25 reading the Oakfabco -- or the corporate rep who was --

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1 let me see where is his name -- no, I guess just their
2 summary judgment is all that I reviewed for Kewanee.

3 Q. Do you know what years Kewanee manufactured
4 boilers which contained asbestos containing gaskets?

5 A. No, I don't know what particular years. I know
6 they went way back in their boiler production,
7 manufacturing and sales operations, but I don't know
8 exactly what years they began manufacturing and selling
9 Kewanee boilers.

10 Q. And my question is a little bit different, but
11 that's okay.

12 Do you know if Kewanee sold replacement gaskets?

13 A. I'm sorry. Repeat that.

14 Q. Do you know if Kewanee sold replacement gaskets
15 for its boilers?

16 A. No, I'm not aware whether they did or they did
17 not.

18 Q. All right. Do you have an opinion about whether
19 or not Mr. Hoffman would have been exposed to asbestos
20 in the replacing of asbestos containing gaskets in
21 association with Kewanee boilers?

22 A. Well, he basically was asked whether he replaced
23 any asbestos containing rope packing -- or sometimes
24 people refer to that as gasketing as well -- but he
25 indicated that he did not think that he was involved in

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1 any gasket or rope replacements when working on a
2 Kewanee boiler, at least the two to three Kewanee
3 boilers that he worked on. In fact he said not on those
4 two particularly, no, when he was asked if he changed
5 the rope on the doors.

6 Q. I want you to assume what he actually said was,
7 "I don't have a specific recollection of changing the
8 rope on those Kewanee boilers, but that's what we did.
9 That was our custom and practice." Okay.

10 Do you have an opinion based upon that set of
11 hypotheticals about whether or not Mr. Hoffman had
12 exposure to asbestos while changing out the gaskets
13 associated with those Kewanee boilers?

14 A. Well, you just asked me to assume something
15 that's contrary to the plaintiff's deposition and
16 testimony, which is the first time I've ever been asked
17 that type of a question.

18 Because Mr. Hoffman was asked with respect to the
19 doors of the Kewanee boilers and the rope on those
20 doors, was that ever replaced, and did he ever recollect
21 replacing the rope on the door; and he answered, "Not on
22 those two particular, no."

23 So I don't know why you would ask me to assume
24 that he answered that question differently, which is
25 misstating.

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1 Q. Okay. Dr. Gregory, do you understand that you're
2 not a fact witness?

3 A. No, but you're asking me to --

4 Q. No, no --

5 A. -- you take a contrary --

6 Q. Yes or no; do you understand you're not a fact
7 witness?

8 A. Yes, I understand that. But I'm telling you --

9 Q. Hold on --

10 A. -- Mr. Hoffman testified to, which is a fact.

11 Q. Sir, I'm trying to get this done as soon as I can
12 here. Okay.

13 If I were to call you, you would give the same
14 answers that you've given to Mark; right? Because
15 you're an expert, and you don't really have a dog in the
16 fight. You just want to give your most honest opinions;
17 is that right?

18 A. That's right.

19 Q. So I want you to assume, then, that he,
20 Mr. Gregory, worked with gaskets associated with those
21 Kewanee boilers and that he scraped out those gaskets.

22 Do you have an opinion about whether or not this
23 removal of gaskets causes a person to be exposed to
24 asbestos? If you don't, you don't; that's fine.

25 MR. ANDRE: Hold on. Object to the form of the

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1 question. Bob Andre.

2 MR. TUVIM: And you can answer it to the extent
3 that assuming that's a fact, even though contrary to
4 Mr. Hoffman's deposition --

5 MR. PEARCE: Mark, I thought you were in
6 Washington. Only form objections.

7 MR. TUVIM: I'm just trying to get him to the
8 point where he can answer the question for you.

9 Assuming that is a fact, do you have an opinion?

10 THE WITNESS: Okay. So let me preface this.
11 Assuming that what you said was a fact -- which was
12 contrary to Mr. Hoffman's testimony -- assuming that he
13 removed asbestos containing rope gaskets, which is not
14 supported -- in fact it's contrary to the evidence --
15 then my opinion is that he may have been exposed to
16 asbestos, but also he may not have been exposed to
17 asbestos, depending upon the conditions under which he
18 was working.

19 BY MR. PEARCE:

20 Q. And if he was exposed to asbestos from removing
21 those gaskets, do you have a range of exposure?

22 A. Well, if you're removing rope packing or rope
23 gaskets -- as I indicated sometimes people refer to them
24 as -- and if you're downwind from that operation and the
25 rope packing or gasket is very dry, and you're using

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1 very aggressive methods to remove it -- in fact those
2 methods involved breaking it up into small pieces and
3 those types of operations -- you would have the
4 potential of being exposed to low levels of asbestos
5 fibers.

6 Q. And when you talk about low levels, do you have a
7 range for me?

8 A. I would say anywhere from nondetectable
9 concentrations up to -- over a short term, perhaps .4
10 fibers per CC, and that would be your highest potential
11 level of exposure for very short period of time. Again,
12 assuming that you're downwind and you're using very
13 aggressive methods and you're removing very dry packing
14 material.

15 Q. Do you agree with your former employer's
16 statement, OSHA, that every occupational exposure to
17 asbestos can cause injury or disease?

18 A. I'm sorry. You cut out.

19 Q. Do you agree with your former employer's
20 statement, your former employer being OSHA, who has said
21 that every occupational exposure to asbestos can cause
22 injury or disease? Do you agree with that statement?

23 A. I don't agree with that because you and I have
24 been exposed -- and everyone in the country when they
25 take their first breath is exposed so -- so I don't

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1 believe that OSHA would take that position.

2 In fact OSHA is mandated by the U.S. Congress and
3 the Supreme Court to establish the most protective
4 exposure standards that are available to ensure that no
5 employee will suffer material impairment of health.

6 So I don't agree -- if that's a statement that
7 was -- that you found that was made by an individual, I
8 would find it very unlikely that OSHA would publish that
9 as official policy. If they did, then they're not
10 following the OSHA act, the U.S. Congress or the Supreme
11 Court, which has mandated that they set standards that
12 are protective, and the most protective, and that will
13 prevent material impairment of health to all working
14 employees.

15 Q. Let me ask this a slightly different way: Are
16 you of the opinion that each exposure to asbestos above
17 background levels increases a person's risk of
18 developing disease?

19 A. Let me just repeat that because it was chopped
20 out again. You're asking me if I agree that any
21 exposure above background level increases the risk of --

22 Q. Developing an asbestos related disease.

23 A. No, I don't agree with that.

24 Q. And what medical literature can you cite me to to
25 support your opinion on that?

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1 A. Well, there's been many epidemiological studies
2 that have been published in the past years that have
3 shown that for all forms of asbestos, there is a
4 threshold dose below which no diseases occur, and that's
5 considered a threshold exposure dose.

6 And, for example, Ilgren, I-l-g-r-e-n, and
7 Browne, spelled B-r-o-w-n-e, in 1991 did an
8 epidemiological study, and they found a threshold
9 exposure dose of around five fiber per CC years; meaning
10 that as long as you didn't exceed that cumulative dose
11 of five fibers per CC years, there was no increased risk
12 or cases of mesothelioma.

13 And that was followed in 1998 by Hansen, et al.,
14 and they established a range of threshold doses, and the
15 lowest range or the lowest threshold dose that they
16 reported was seven fiber per CC years. And then that
17 was followed by Whitehouse, et al., in 2008, and they
18 established a lower threshold dose of -- and they gave a
19 range from 2.2 to three fiber per CC years.

20 And there's been others that have looked only at
21 chrysotile asbestos, for example, and those authors have
22 given much higher threshold doses ranging from 25 fiber
23 per CC years all the way up to 1,000 fiber CC years for
24 chrysotile asbestos exposures. And those authors
25 include Pierce, et al., in 2008; Berman and Crump in

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1 2003; Bernstein and Hoskins in 2006; and a couple of
2 earlier ones, Wagner in 1980, and Kevin Browne in 1986.

3 And there's been many, many, other studies, but
4 those are the ones that I found to be most reliable and
5 most scientifically valid.

6 Q. Is it fair to say that you're of the opinion that
7 there is a safe level of exposure to asbestos?

8 A. Yes, in my opinion there is a safe exposure dose
9 to asbestos. And, again, if there were not, we'd all
10 have it.

11 Q. Is there a safe exposure dose above background
12 levels?

13 A. And let me finish that answer: If there wasn't
14 safe exposure dose, we would have all have asbestos
15 related diseases. Because we've all been exposed to
16 asbestos; it's ubiquitous in our environment. And if
17 there was no safe level, then we would all have asbestos
18 related diseases.

19 Q. Is there a safe level above background that a
20 person can be exposed to and not be at increased risk of
21 developing a disease?

22 A. Yes. And that's all in those studies that I
23 recited, their threshold doses. In other words, a dose
24 is exposure concentrations times duration. So it's not
25 just the instantaneous concentration that you're exposed

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1 to; it's how long you're being exposed to that on a
2 cumulative basis that determines your exposure dose.

3 And if that's above these threshold levels that I
4 indicated for the authors that I listed previously, then
5 you have an increased risk of developing mesothelioma.

6 Q. All right. Sir, have you reviewed the Millette
7 paper of studies that determined asbestos fiber release
8 during the removal of valve packing?

9 A. I have reviewed that in the past.

10 Q. Have you reviewed McKinnery, M-c-K-i-n-n-e-r-y,
11 Evaluation of Airborne Asbestos Fiber Levels During
12 Removal and Installation of Valves Gaskets and Packing?

13 A. Yes, I have reviewed that in the past.

14 Q. And your range of exposure to removal of gaskets,
15 where does that come from?

16 A. That's Madl, M-a-d-l, et al., 2007; and their
17 studies included the authors and the publications that
18 you just talked about. So the range I gave you was
19 actually a compilation and an average of all the valid
20 gasket and packing studies that had been performed up
21 until around 2007.

22 Q. And do you have any opinions in this case with
23 regards to American Standard?

24 A. Yes. Based on my review of the depositions in
25 this case, there's no indication that he performed work

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1 on the American Standard boilers other than service work
2 and installation work. And there's no evidence from his
3 testimony that during those operations he was exposed to
4 asbestos containing materials; although he said that he
5 did change out gaskets on the doors or the firebox or
6 the burner plate, he wasn't sure which one he changed
7 gaskets out of.

8 If those gaskets contained asbestos -- which we
9 don't know one way or the other that they contained
10 asbestos, and there's no evidence from the testimony
11 that indicates that those contained asbestos. And he
12 didn't say that he removed any American Standard
13 boilers, just that he installed American Standard
14 boilers. And he was asked if he ever came in contact
15 with any insulation on an American Standard jacketed
16 boiler, and he said, "I may have touched it once or
17 twice."

18 So just based on his testimony, and even assuming
19 that he changed gaskets on the doors or the firebox or
20 the burner plate, and assuming that those contained
21 asbestos -- which is not supported by the evidence in
22 this case -- it's my opinion that based on the fact that
23 he said he only worked on a dozen American Standard
24 boilers, as far as servicing those boilers, then it's my
25 opinion that he was not exposed to significant

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1 concentrations of asbestos from the work that he
2 performed on American Standard boilers;

3 And that his exposures from all the other
4 potential asbestos containing products and materials
5 that he described during his career were much, much
6 higher and resulted in much higher exposures than any
7 work that he performed on American Standard boilers.

8 In fact his exposure, in my opinion, from all the
9 other sources that he listed far exceeded and rendered
10 insignificant any asbestos exposures that he may have
11 received from working with American Standard boilers,
12 even assuming that he changed asbestos containing
13 gaskets on the American Standard boilers' doors or the
14 firebox or the burner plate, which is not supported by
15 the evidence in this case.

16 Q. Quick question for you: You're with the American
17 Standard attorney; correct?

18 A. Pardon?

19 Q. You're sitting right now next to the American
20 Standard attorney; correct?

21 A. That's correct.

22 Q. Have you asked him whether or not those gaskets
23 were asbestos containing or not?

24 A. I didn't ask him that. I just have to go on the
25 affidavits and the information in the motion for summary

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1 judgment from Trane. And that involved -- and I don't
2 see the affidavits -- here it is. So the declaration of
3 Dennis Dorman, for example, who was a Trane engineer for
4 38 years with Trane, Incorporated, which eventually --
5 well, predecessor to Trane was American Standard. And
6 it indicated in that declaration that Trane never
7 specified, recommended or used asbestos containing
8 insulation gaskets or packing in Trane air handling
9 units -- we're talking air handling units here and not
10 the American Standard furnaces.

11 But on that note or on that topic, Richard
12 Olson's affidavit of October 14th, 1999, it indicated
13 that from 1950 forward, every jacketed boiler
14 manufactured and sold by American Standard contained
15 fiberglass insulation; and the American Standard boilers
16 that were not jacketed were not insulated by American
17 Standard but were shipped bare metal without insulation.

18 And Mr. Olson, I remember from other cases, also
19 indicated that the sections of American Standard
20 sectional boilers were not put together with any kind of
21 packing or gasketing material. And also Mr. Olson
22 indicated that the jacketing was a fiberglass material
23 from 1950 on.

24 And from my past work with American Standard
25 cases, that's been my understanding, that Richard

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1 Olson's testimony -- who was a qualified engineer who
2 was in charge of product management for boilers -- he
3 was very knowledgeable in the construction of their
4 boilers. And he indicated that American Standard only
5 used fiberglass insulation inside the jackets from 1950
6 on, and they didn't use any rope packing on their
7 boilers because the cast iron sections of the boilers
8 sealed together with a push nipple or a metal type of
9 design.

10 Q. Do you have any plans to do any further work on
11 this case?

12 A. I'm sorry?

13 Q. Do you have any plans to do any further work on
14 this case?

15 A. Only if I'm asked by Mark Tuvim.

16 Q. And do you have any PowerPoints or trial exhibits
17 prepared?

18 A. I'm sorry. I hate to have you keep repeating
19 that but --

20 Q. Do you have any PowerPoints or any other trial
21 exhibits prepared for this case?

22 A. Not at this time, and I haven't been asked to
23 prepare any.

24 Q. And you are --

25 A. I'm sorry. You cut out again --

Earl D. Gregory, Ph.D., CH

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1 MR. TUVIM: Tim, it would be helpful if you
2 picked up your receiver. I know it's not the most
3 convenient.

4 BY MR. PEARCE:

5 Q. And what was your income last year from doing
6 asbestos related litigation work?

7 A. For American Standard?

8 Q. No, in general.

9 A. It was in excess of over \$200,000.

10 Q. And what about the year before that?

11 A. Much less than that. Part of that year I was
12 working full time and only doing this type of work on
13 the side. And by the side, I mean I had permission from
14 my employer; I did it on vacation time, on weekends and
15 in the evenings.

16 MR. PEARCE: I don't have any other questions.

17 MR. ANDRE: This is Bob Andre on the phone. Can
18 you hear me, Mr. Gregory?

19 THE WITNESS: Yes, I hear you.

20 MR. ANDRE: The plaintiffs' counsel asked you if
21 you have any opinions on American Standard boilers.
22 Do you have any opinions in this case on the Kewanee
23 boilers?

24 THE WITNESS: Yes. Based on Mr. Hoffman's
25 testimony that he only cleaned two to three Kewanee

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1 boilers and that he only cleaned the tubes, and that in
2 the process of cleaning the tubes, he was not handling
3 any asbestos containing components -- based on that
4 information, it's my opinion that he was not exposed to
5 significant concentrations, if any concentrations, of
6 asbestos from his work on Kewanee boilers.

7 And he indicated that he couldn't remember any
8 asbestos on the outside of the Kewanee boilers, and
9 there's just no evidence to indicate that he disturbed
10 any asbestos containing materials associated with the
11 boiler, and he didn't indicate that he changed any
12 gaskets or packing for that matter.

13 In fact when he was asked if he changed any
14 gaskets or rope on the doors of the Kewanee boilers, he
15 said, "Not on those two particularly, no." So in my
16 opinion there's just no evidence that he had any
17 exposures to asbestos as a result of his work with
18 Kewanee boilers.

19 MR. ANDRE: Thank you very much, Mr. Gregory. No
20 more questions.

21 THE WITNESS: You're welcome.

22 MR. TUVIM: Anyone else? This is Mark Tuvim.
23 I'll have these exhibits scanned and sent on Monday when
24 I'm back in my office. And we'll reserve signature if
25 the deposition is ordered. Okay. Signing off.

Earl D. Gregory, Ph.D., CH

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1 (Whereupon, at the hour of 12:09 p.m., the
2 deposition was adjourned.)
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Earl D. Gregory, Ph.D., CIH

January 30, 2015

DECLARATION UNDER PENALTY OF PERJURY

I, EARL D. GREGORY, PH.D., CIH, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on January 30, 2015; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____,
20____, at _____, California.

EARL D. GREGORY, PH.D., CIH

Earl D. Gregory, Ph.D., CIH

January 30, 2015

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EARL D. GREGORY, PH.D., CIH

DATED

Earl D. Gregory, Ph.D., CII

January 30, 2015

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF SAN FRANCISCO)

4 I, Giselle Girard, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were taken
12 down by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision;

14 I further certify that I am neither counsel
15 for, nor related to, any party to said proceedings, nor
16 in any way interested in the outcome thereof.

17 In witness whereof, I have hereunto
18 subscribed my name.

19
20 Dated: February 4, 2015

21
22 
23

24 Giselle Girard
25 CSR No. 12901



Earl D. Gregory, Ph.D., CIH

January 30, 2015

U.S. Legal Support, Inc. February 4, 2015
44 Montgomery Street
Suite 550
San Francisco, California 94101

EARL D. GREGORY, PH.D., CIH
C/O: MARK B. TUVIM, ESQ.
GORDON & REES, LLP
701 Fifth Avenue
Suite 2100
Seattle, Washington 98104

Re: Larry Hoffman vs. Alaskan Copper Companies, Inc.

Date of Deposition: January 30, 2015

Dear Earl Gregory,

The original transcript of your deposition taken in the above-referenced matter is available at this office for your review. If it is more convenient to read a copy of the transcript and waive signature of the original transcript, please notify our office by letter sent certified or registered mail of any changes made, with copies sent to all counsel.

In the event you have not read, corrected and signed your deposition within thirty (30) days of the receipt of this letter, it may be used with the full force and effect as though it had been read, corrected and signed.

If you wish to arrange an appointment to review the original transcript, please contact this office at (415) 362-4346.

Sincerely,

U.S. Legal Support
Production Department

Cc: All counsel
The deponent

Original: Original transcript

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